



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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EX PARTE

September 10, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 02-144, MM Docket No. 92-266, MM Docket No. 93-215,
CS Docket No. 94-28, and CS Docket No. 96-157

Dear Ms. Dortch:

On September 9, 2004, Daniel L. Brenner (Senior Vice President, Law and Regulatory Policy, National Cable & Telecommunications Association), Diane B. Burstein (Deputy General Counsel, NCTA), Steven J. Horvitz (Cole, Raywid & Braverman) and Art Harding (Fleischman & Walsh) met with the following Media Bureau staff: Steve Broeckaert, Katie Costello, Peggy Greene, John Norton, and Kenneth Lewis.

During our meeting, we discussed the procedures associated with and costs imposed on cable operators filing effective competition petitions. We explained that after a lengthy negotiation, representatives of cable operators and the Satellite Broadcasting and Communications Association (SBCA) reached agreement for the provision of DBS subscribership data. Cable operators generally have found that SBCA has provided the requested data in an expeditious and reliable manner. (Attached is a redacted version of a sample of the SBCA data report that we provided during our meeting.) However, the cost of obtaining this information is excessive, particularly when the request to SBCA concerns "zip plus four" data. (A sample calculation of those costs also was distributed and is also attached.) Costs for obtaining data necessary to make an effective competition showing also have increased overall. Operators now must pay two sources (one source to provide the underlying zip code information and SBCA to provide the associated DBS subscribership data) to obtain all the information necessary to make this showing that previously was available from a single source. DBS operators ceased providing necessary subscribership data to any source other than their trade association, SBCA, last year.

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Finally, consistent with NCTA's comments in the above-captioned proceeding, we discussed why the FCC should revise its effective competition test. We provided the attached chart demonstrating that DBS penetration exceeds 15 percent in more than 40 states. We urged the FCC to consider proposals to change the presumption in those states or counties where penetration exceeds the relevant threshold.

Respectfully submitted,

/s/ Diane B. Burstein

Diane B. Burstein

Attachments

cc: Steve Broeckaert
Katie Costello
Peggy Greene
John Norton
Kenneth Lewis

Exhibit 3
States with Direct-To-Home (DTH) Dish Penetration of Fifteen Percent or More
April 2004

State	Penetration Rate	State	Penetration Rate
Vermont	37.30%	South Carolina	22.60%
Montana	34.43%	Arizona	22.35%
Utah	32.98%	Minnesota	22.06%
Idaho	32.48%	North Dakota	21.96%
Wyoming	32.09%	California	21.92%
Mississippi	29.52%	Oregon	21.92%
Missouri	29.14%	Wisconsin	21.40%
Arkansas	28.34%	South Dakota	21.28%
Georgia	26.70%	Maine	20.87%
New Mexico	26.04%	Nebraska	20.23%
Colorado	25.79%	Washington	19.75%
Oklahoma	25.46%	Kansas	19.57%
Alabama	24.15%	Michigan	19.23%
Kentucky	23.88%	Illinois	19.13%
Indiana	23.84%	Florida	18.79%
West Virginia	23.60%	Alaska	18.21%
North Carolina	23.56%	Louisiana	16.35%
Iowa	23.42%	Ohio	16.20%
Tennessee	23.31%	Nevada	16.02%
Texas	23.18%	Maryland	15.01%
Virginia	22.85%		

Source: SkyTRENDS SkyMAP, April 2004; www.skyreport.com; TV Household data from A.C. Nielsen.

ECTR – Effective Competition Tracking Report



Provided by
Satellite Broadcasting and Communications Association

Pursuant to Section 76.907(c) of the FCC Rules, and your effective competition tracking request dated August 18, 2004 please find the following Direct-to-Home (DTH) satellite subscriber numbers per zip code (and/or zip+4 where necessary). The provision and use of this Effective Competition Tracking Report is governed by and subject to the terms and conditions of the Agreement for Provision and Use of Confidential Data, between your company and SBCA.

Report Date: August 27, 2004

Franchise Area: [REDACTED]

ZIP Code DTH Count

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Data is current through 6/30/2004

Report Prepared by:
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Methodology: Direct-To-Home (DTH) subscriber data reflects aggregated DIRECTV, DISH Network and Motorola Access Center (C-Band) residential subscriber totals. The following data collection procedures are applied by Members in the normal course of business: a) single accounts with multiple receivers are only counted once; b) commercial and test accounts are not included; c) each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber; d) zip codes are taken from service locations (not billing addresses, where different); e) inactive accounts are routinely removed; f) invalid (undeliverable) addresses have been corrected where known; g) courtesy or complimentary accounts are included; and h) zip code information for Members' subscribers is periodically updated to reflect changes to zip codes by the United States Postal Service.

EFFECTIVE COMPETITION SHOWINGS

"Zip + 4" is relatively simple, accurate, non-controversial.

SBCA charges \$0.25 per "Zip + 4."
(plus a flat \$15 per five-digit zip code)

Although the cost sounds modest, it actually is quite high, because each "Zip + 4" is so small. There can be thousands of "Zip + 4" units assigned to a smaller community.

Example:

- A Texas community with 20,000 households.
- The community includes most of two five-digit zip codes and a very small portion of two additional five-digit zip codes.
- **The community has 6200 "ZIP + 4" units.**
- **SBCA's data charge would be approximately \$1,600 for this one community.** (\$1550 for ZIP + 4, another \$60 for the four underlying five-digit zip codes.)
- There are additional preparation costs, because SBCA (unlike its predecessor) does not identify the "Zip + 4" units assigned to a particular franchise area. The cable operator must provide that information.
- In this example, the local DBS penetration is 40%.